

Message Text

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UNCLAS SECTION 1 OF 3 QUITO 8690

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SUBJECT: ANCOM OBR-THE TREATMENT OF FOREIGN INVESTMENT IN ECUADOR

REF: STATE 245279, STATE 279834

1. GENERAL

THE GOVERNMENT OF ECUADOR (GOE ACTIVELY ENCOURAGES DIRECT FOREIGN INVESTMENT IN THE COUNTRY. INVESTMENT INCENTIVES ARE AVAILABLE TO FOREIGN FIRMS THAT INVEST IN ECONOMIC ACTIVITIES CLEARLY BENEFICIAL TO THE NATION. IN ONLY A VERY FEW ECONOMIC AREAS IS FOREIGN INVESTMENT ACTUALLY PROSCRIBED (SEE BELOW). ONCE LEGALLY ESTABLISHED IN ECUADOR, A BRANCH OF A FOREIGN FIRM ENJOYS BASICALLY THE SAME RIGHTS AS A DOMESTIC FIRM.

2. ECUADOREAN LEGISLATION DEALING WITH DIRECT FOREIGN INVESTMENT FALLS WITHIN THE LIMITATIONS ESTABLISHED BY ANDEAN PACT (ANCOM) DECISION 24. ECUADOR'S INTERPRETATION OF DECISION 24 IS NOW ONE OF THE MOST LIBERAL AMONG ANCOM MEMBER COUNTRIES. ALL INDUSTRIAL SECTORS THAT COULD BE EXEMPTED FROM THE PURVIEW OF DECISION 24, UNDER ANCOM REGULATIONS WERE IN FACT EXEMPTED BY THE GOE. IN VIRTUALLY ALL CASES, FOREIGN INVESTMENT IN THESE EXEMPTED SECTORS RECEIVES MORE FAVORABLE TREATMENT THAN IN OTHER ANCOM COUNTRIES. IN ADDITION, ECUADOR IS TREATED BY THE ANCOM AS ONE OF THE TWO LEAST-DEVELOPED AMONG ANCOM COUNTRIES, AND AS SUCH RECEIVES
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SPECIAL PREFERENCES, E.G., DEFERRALS ALLOWED IN THE

FULFILLING OF CERTAIN ANCOM OBLIGATIONS.

3. THE GOE RESERVES THE RIGHT TO APPROVE OR DISAPPROVE A FOREIGN INVESTMENT ON THE BASIS OF WHETHER OR NOT IT MAKES A POSITIVE CONTRIBUTION TO THE LOCAL ECONOMY. IN PRACTICE OVER THE LAST YEAR OR TWO, THE GOE HAS NOT DISAPPROVED THE REQUEST OF ANY REPUTABLE FOREIGN FIRM TO INVEST IN ECUADOR. THE CRITERIA THAT ARE OBSERVED IN CONNECTION WITH AN APPLICATION FOR INVESTMENT INCENTIVES AND/OR A TECHNOLOGY AGREEMENT INCLUDE:

--DEGREE OF USE OF ECUADOREAN RAW MATERIALS IN THE INDUSTRIAL PROCESS.

--AMOUNT OF PRODUCTION TO BE EXPORTED

--DEGREE TO WHICH PRODUCTION BY LOCAL FIRMS PRESENTLY ENGAGED IN SAME ACTIVITY IS SUFFICIENT IN QUANTITY AND QUALITY.

-- EMPLOYMENT OPPORTUNITIES TO BE GENERATED LOCALLY.

-- VALUE OF TECHNOLOGY TO BE EMPLOYED.

4. ACTIVITIES RESERVED FOR DOMESTIC INVESTMENT
NEW FOREIGN INVESTMENT IS EXPRESSLY PROHIBITED IN THE FOLLOWING ACTIVITIES WHEN THE FOREIGN PARTICIPATION EXCEEDS 20 PERCENT OF THE CAPITAL OF THE FIRM: BANKING, FIANCE, AND INSURANCE COMPANIES; CONSTRUCTION FIRMS (EXCLUDING THOSE WORKING ON INFRASTRUCTURE PROJECTS AND THOSE PRODUCING CONSTRUCTION MATERIALS); COMMUNICATIONS MEDIA; TRANSPORTATION COMPANIES; AND DOMESTIC MARKETING ENTERPRISES. EXCEPTION IS MADE IN THE LATTER CASE WHEN IN THE JUDGEMENT OF THE MINISTRY OF INDUSTRIES, COMMERCE AND ECONOMIC INTEGRATION (MICEI) THE INVESTMENT WILL EXPAND PRODUCTIVE ACTIVITIES. AN EXAMPLE OF SUCH AN EXCEPTION WOULD BE INVESTMENT A DEPARTMENT STORE IN QUITO, WHERE THERE ARE PRESENTLY NONE, OR IN A SUPERMARKET IN A RURAL AREA OF ECUADOR WHERE LOCAL ENTREPRENEURS HAVE NO INTEREST IN ESTABLISHING ONE.

5. CONSISTENT WITH THE TERMS OF DECISION 24, THE ESTABLISHMENT IN ECUADOR OF BRANCHES OF FOREIGN FIRMS IS UNCLASSIFIED

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ALSO NOT PERMITTED.

6. GOVERNMENT PARTICIPATION IN INDUSTRIAL INVESTMENT
WHILE ECUADOR HAS AN ECONOMY THAT IS ESSENTIALLY BASED ON PRIVATE ENTERPRISE, THE GOVERNMENT DOES PLAY A PREDOMINANT ROLE IN CERTAIN KEY SECTORS. ANY FOREIGN INVESTMENT IN THESE SECTORS WOULD BE CLOSELY CONTROLLED BY THE GOE. FOLLOWING ARE THE INDUSTRIAL ACTIVITIES IN

WHICH THE STATE TAKES THE LEAD: PETROLEUM REFINING;
BASIC STEELMAKING; AMMONIA AND UREA PRODUCTION; AND
FISHERIES.

7. THE FOLLOWING INDUSTRIAL SUB-SECTORS ARE AMONG THOSE
IN WHICH ONLY MIXED (PUBLIC/PRIVATE) ENTERPRISES ARE
ALLOWED TO OPERATE. NO OBLIGATORY PERCENTAGE OF STATE
PARTICIPATION HAS BEEN ESTABLISHED, HOWEVER, AND THE
PRIVATE INVESTOR(S) MAY BE DOMESTIC AND/OR FOREIGN:
CEMENT PRODUCTION; SHIPYARDS; WOOD AND PAPER PRODUCTION;
SLAUGHTERHOUSES; PETROCHEMICALS; INSECTICIDES; TRACTORS;
AND DIESEL ENGINES.

8. GOE AGENCIES THAT REVIEW FOREIGN INVESTMENT
BY FAR THE MOST IMPORTANT GOE OFFICE INVOLVED IN
REVIEWING AND APPROVING FOREIGN INVESTMENT IS THE
FOREIGN INVESTMENT DEPARTMENT OF THE MICEI:
DEPARTAMENTO DE INVERSIONES EXTRANJERAS
MINISTERIO DE INDUSTRIAS, COMERCIO E INTEGRACION
JUAN LEON MERA Y ROCA ESQ.
QUITO, ECUADOR
POTENTIAL FOREIGN INVESTORS CAN PRESENT AND DISCUSS THEIR
PROPOSALS HERE, AS WELL AS MAKE APPLICATION FOR FORMAL
AUTHORIZATION OF THEIR INVESTMENT.

9. ONCE AUTHORIZED BY THE FOREIGN INVESTMENT DEPARTMENT
OF THE MICEI, A FOREIGN INVESTMENT MUST BE REGISTERED WITH
THE FOREIGN EXCHANGE DEPARTMENT OF THE CENTRAL BANK:
BANCO CENTRAL DEL ECUADOR
CALLES GUAYAQUIL Y BRICENO ESQ.
QUITO, ECUADOR

10. EACH OF THREE OTHER GOVERNMENT ENTITIES ALSO PLAYS AN
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IMPORTANT ROLE IN THE REVIEW OF FOREIGN INVESTMENT. THE
INTERMINISTERIAL COMMITTEE ON INDUSTRIAL DEVELOPMENT, WHICH
IS MADE UP OF REPRESENTATIVES OF THE MINISTRY OF FINANCE,
THE SUB-MINISTRY OF INDUSTRY, CENDES (SEE BELOW) AND OTHERS,
MEETS TWICE A WEEK TO DETERMINE THE ELIGIBILITY OF SPECIFIC
INVESTMENTS, DOMESTIC AND FOREIGN, FOR FISCAL AND OTHER
INCENTIVES UNDER THE INDUSTRIAL DEVELOPMENT LAW. SIMILARLY,
THE INTERMINISTERIAL COMMITTEE ON TECHNOLOGY TRANSFER MEETS
REGULARLY TO REVIEW PROPOSED TECHNOLOGY AGREEMENTS WITH FOREIGN
FIRMS. (SEE TECHNOLOGY AGREEMENTS.)

11. FINALLY, A POTENTIAL INVESTOR SHOULD BE AWARE OF THE
ACTIVITIES OF THE INDUSTRIAL DEVELOPMENT CENTER OF ECUADOR
(CENDES), P.O. BOX 2321, QUITO, ECUADOR. CENDES PREPARES
FEASIBILITY AND PREFEASIBILITY STUDIES ON PROJECTS CONSIDERED

ESPECIALLY BENEFICIAL TO THE DEVELOPMENT OF THE COUNTRY.

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IT ALSO PROMOTES FOREIGN AND DOMESTIC INVESTMENT IN THESE
AND OTHER HIGH-PRIORITY PROJECTS. AS MENTIONED ABOVE,
CENDES HAS A VOICE IN CLASSIFYING AN INVESTMENT PROJECT
FOR PURPOSES OF THE INDUSTRIAL DEVELOPMENT LAW.

12. THE CENTRAL BANK OF ECUADOR AND CENDES BOTH PUBLISH
ENGLISH-LANGUAGE BROCHURES WITH ADDITIONAL INFORMATION
OF USE TO A POTENTIAL INVESTOR. THIS MATERIAL IS
AVAILABLE ON REQUEST FROM THE ABOVE ADDRESSES.

13. RELEVANT LAWS AND REGULATIONS
FOREIGN INVESTMENT IN ECUADOR IS SUBJECT TO A VARIETY OF
LAWS AND REGULATIONS WHICH HAVE NOT BEEN CODIFIED.
FOLLOWING ARE BRIEF SUMMARIES OF THREE OF THE MOST
IMPORTANT LAWS FROM THE POINT OF VIEW OF THE POTENTIAL
INVESTOR:

INDUSTRIAL DEVELOPMENT LAW
THIS LAW OFFERS TO "TRANSFORMATION" INDUSTRIES
(I.E., THOSE THAT APPLY AN INDUSTRIAL PROCESS
TO RAW MATERIALS AND/OR INTERMEDIATE GOODS)
IMPORT DUTY AND TAX REDUCTIONS. THE SIZE OF
THESE BENEFITS DEPEND ON THE IMPORTANCE OF
THE INDUSTRY TO THE ECONOMIC DEVELOPMENT OF
ECUADOR AS DETERMINED BY THE INTERMINISTERIAL
COMMITTEE ON INDUSTRIAL DEVELOPMENT DISCUSSED
ABOVE.
ALSO HAVING A BEARING ON THE DEGREE OF

INCENTIVES AVAILABLE IS THE LOCATION OF
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THE INDUSTRY WITHIN ECUADOR. THOSE LOCATED OUTSIDE OF THE PROVINCES OF PICHINCHA (QUITO), GUAYAS (GUAYAQUIL), AND THE GALAPAGOS ARE ELIGIBLE FOR MORE LIBERAL TREATMENT UNDER THE LAW. A LIST OF THOSE INDUSTRIES AUTOMATICALLY FALLING INTO THE HIGHEST "SPECIAL" CATEGORY IS PUBLISHED EACH YEAR BY THE NATIONAL PLANNING BOARD. A DETAILED DISCUSSION OF THIS LAW IS CONTAINED IN OBR 75-25 MARKETING IN ECUADOR.

FISHING LAW

THIS LAW PROVIDES SIMILAR EXONERATION FROM TAXES AND IMPORT DUTIES TO DOMESTIC OR MIXED (UP TO 49 PERCENT FOREIGN) FIRMS ACCORDING TO THE PRIORITY OF THE PROJECT IN THE CONTEXT OF THE OVERALL DEVELOPMENT OF THE FISHING INDUSTRY. THE ACTIVITIES OF THE MIXED COMPANY, BOTH IS FISHING AND PROCESSING OF FISHING PRODUCTS, WOULD BE SUBJECT TO THE APPROVAL AND REVIEW OF THE GENERAL DIRECTORATE OF FISHING WITHIN THE MINISTRY OF NATURAL RESOURCES AND ENERGY, FROM WHICH FURTHER DETAILS ON THIS LAW MAY BE OBTAINED.

THE TOURIST DEVELOPMENT LAW

BENEFITS UNDER THIS LAW MAY BE GRANTED TO ANY ENTERPRISE ENGAGED IN ACTIVITIES RELATED TO TOURISM WITHIN ECUADOR. BESIDES AN EXONERATION OF UP TO 10 PCT OF THE IMPORT DUTIES ON MATERIALS AND EQUIPMENT NOT PRODUCED LOCALLY, DEDUCTIONS ARE ALLOWED ON BOTH PERSONAL AND CORPORATE INCOME FOR CONSTRUCTION OR IMPROVEMENT OF REAL PROPERTY, THE FINANCING OF SPECIFIC PROJECTS AND THE ACQUISITION OF STOCK FROM TOURISM-RELATED COMPANIES. THE DEGREE OF INCENTIVES FOR WHICH A PARTICULAR INVESTMENT PROJECT IS ELIGIBLE WILL BE DETERMINED BY THE NATIONAL DIRECTORATE OF TOURISM, AN AGENCY WITHIN THE MICEI.

14. IT SHOULD BE NOTED THAT THE OFFICE WITH PRIMARY
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RESPONSIBILITY FOR APPROVING OR DISAPPROVING A PROPOSED FOREIGN INVESTMENT PROJECTS, REGARDLESS OF THE INDUSTRIAL SUB-SECTOR IN WHICH THE INVESTMENT IS TO BE MADE, IS THE FOREIGN INVESTMENT DEPARTMENT OF THE MICEI.

15. AVAILABILITY OF CREDIT

AN ECUADOREAN COMPANY WITH FOREIGN PARTICIPATION OF UP TO 49 PCT OF THE TOTAL CAPITAL OF THE FIRM IS FREE TO TAKE ADVANTAGE OF ALL LOCALLY AVAILABLE SOURCES OF CREDIT, WHETHER OF LONG, MEDIUM OR SHORT TERM. THIS INCLUDES CREDIT AVAILABLE FROM OFFICIAL AND SEMI-OFFICIAL SOURCES SUCH AS THE NATIONAL FINANCIAL CORPORATION (CFN), WHICH OFFERS INDUSTRIAL CREDIT UP TO 65 PCT OF THE TOTAL INVESTMENT.

16. TECHNOLOGY AGREEMENTS

TECHNOLOGY AGREEMENTS ARE ANALYZED AND APPROVED ON A CASE-BY-CASE BASIS BY AN INTERMINISTERIAL COMMITTEE ON THE TRANSFER OF TECHNOLOGY. NO REGULATIONS HAVE YET BEEN PUBLISHED IN THIS REGARD, AND NONE ARE EXPECTED TO BE PUBLISHED IN THE NEAR FUTURE. AS A RESULT, THE POLICIES OF THE GOVERNMENT ARE MUCH LESS CLEAR-CUT HERE THAN IN THE CASE OF A TANGIBLE INVESTMENT OF CAPITAL.

17. THE TECHNOLOGY COMPONENT OF FOREIGN INVESTMENT IS CONSIDERED INDEPENDENTLY FROM A REQUEST FOR AUTHORIZATION OF A FOREIGN INVESTMENT; AUTHORIZATION OF THE FOREIGN INVESTMENT DOES NOT IMPLY OFFICIAL ACCEPTANCE OF THE TECHNOLOGY PACKAGE. IN PRACTICE, HOWEVER, THE REPORT OF THE FOREIGN INVESTMENT DEPARTMENT OF THE MICEI ON THE PROPOSED INVESTMENT CARRIES A GREAT DEAL OF WEIGHT IN THE FINAL DETERMINATION OF THE COMMITTEE ON THE TRANSFER OF TECHNOLOGY AS TO THE ACCEPTABILITY OF THE CORRESPONDING TECHNOLOGY AGREEMENT.

18. THE PAYMENT OF ROYALTIES UNDER NEW LICENSING AGREEMENTS IS NOT NOW BEING PERMITTED, AND EXISTING ROYALTY AGREEMENTS ARE BEING RENEGOTIATED.

19. FOREIGN EXCHANGE REMITTANCES

ECUADOR CURRENTLY HAS TWO FOREIGN EXCHANGE MARKETS, THE OFFICIAL AND THE FREE MARKET. THE FOREIGN INVESTOR IS UNCLASSIFIED

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GIVEN THE OPTION OF USING EITHER THE FREE OR THE OFFICIAL MARKET RATE IN REGISTERING HIS CAPITAL WITH THE CENTRAL BANK; BUT THE INVESTOR MUST THEN USE THAT SAME EXCHANGE SYSTEM IN REMITTING PROFITS. THE FACT THAT ECUADOR DOES NOT HAVE A SYSTEM OF EXCHANGE CONTROL HAS MADE IT DIFFICULT TO MONITOR THE EXCHANGE REMITTANCES OF FOREIGN INVESTORS. INDICATIONS ARE THAT THE GOE IS STUDYING WAYS TO CONTROL

SUCH REMITTANCES IN THE FUTURE.

20. FINAL OBSERVATIONS

THE CURRENT ECUADOREAN GOVERNMENT STRESSES ITS FLEXIBILITY IN ACCOMMODATING THE SERIOUS FOREIGN INVESTOR. THE FOREIGN INVESTMENT DEPARTMENT OF THE MICEI IN PARTICULAR IS QUITE WILLING TO SUGGEST MODIFICATIONS OR ALTERNATIVES WHEN THE PROJECT CONTEMPLATED BY A FOREIGN INVESTOR IS FOR SOME REASON CONSIDERED INAPPROPRIATE FOR ECUADOR.

21. THE POTENTIAL INVESTOR SHOULD ALSO KEEP IN MIND, HOWEVER, THAT IT IS NOT ALWAYS SMOOTH SAILING ONCE AN INVESTMENT IS MADE IN ECUADOR. SOME FOREIGN INVESTORS HAVE REMARKED THAT CERTAIN GOE AGENCIES, FOR EXAMPLE THE NATIONAL DEVELOPMENT BANK, DO NOT LOOK AT AN INVESTMENT IN THE SAME LIGHT AS THE MICEI AND SEEM RELUCTANT TO IMPLEMENT THE TAX AND TRADE BENEFITS THAT THE FOREIGN INVESTOR UNDERSTOOD AS HAVING BEEN PREVIOUSLY AGREED UPON.

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TO A LARGE EXTENT THIS SITUATION IS ATTRIBUTABLE TO THE FACT THAT DECISION 24 AND THE RELATED LOCAL LAWS ARE ALL STILL IN AN EVOLUTIONARY STAGE AND, AS A RESULT, ARE FREQUENTLY BEING MODIFIED. A GOOD LOCAL LAWYER (A FOREIGN INVESTOR IS REQUIRED TO HAVE ONE IN ANY CASE UNDER ECUADOREAN LAW) CAN BE OF CONSIDERABLE HELP IN PREVENTING AND RESOLVING SUCH PROBLEMS.

22. ALSO, INVESTORS IN SENSITIVE ACTIVITIES, SUCH AS THE EXPLOITATION OF ECUADOREAN NATURAL RESOURCES, OR IN

THOSE INDUSTRIAL SUB-SECTORS IN WHICH THE GOVERNMENT
PLAYS A CONSIDERABLE ROLE, MUST BE PREPARED FOR SHIFTS
IN OFFICIAL POLICY THAT HAVE A DIRECT BEARING ON THE
PROFITABILITY OF ANY GIVEN VENTURE. THESE POLICY
CHANGES CAN BE OCCASIONED BY A CHANGE OF GOVERNMENT
OR EVEN BY A CHANGE IN THE TOP MANAGEMENT OF THE
RELEVANT MINISTRY OR AGENCY.
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